Remarks and Arguments

1. This amendment is in response to the Examiner's Non-Final Action of
5   June 28, 2006.

2. Claim 22, which was rejected under 35 USC 112, second paragraph as being indefinite, has been cancelled without prejudice.

10   3. Claims 18, 19 and 21 – 30 have been rejected under 35 USC 103(a) as being unpatentable over US PAT 6,611,201, the now notorious Bishop Patent '201.

Applicant notes that the burden of establishing obviousness rests on the Examiner. In order to support a prima facie case for obviousness using a
15   particular set of references, the references must exhibit the following attributes:

    (a) The prior art references must collectively teach or suggest all of the claim limitations in the application;

    (b) There must be a reasonable expectation of success in modifying the
20   reference; and

    (c) The references must suggest or provide some motivation to modify and / or combine the reference teachings.

25   4. With respect to Claim 18 and its dependent claims, the office action states that a correlation table is well known in the art to store data. This may be true, but what has this to do with the method step provided in Claim 18 which provides that target product groups for groups of products to be recalled are to be correlated to transmission channels. This is the operative claim

limitation, not that data is to be stored in a correlation table. Here, the office action states that it would have been obvious by means of inherency that such information would need to be stored as bishop teaches. This is not true. For example the recall data itself could include a channel identifier and thus

5   that channel identifier could be used to select a transmission channel. As such, inherency can not be used to sustain this rejection.

Applicant simply does not follow the Examiner logic in this rejection. First, Bishop '201 does not teach the use of multiple transmission channels which

10   are selected according to the correlation stored in the table as contemplated by the Applicant. Bishop uses a single transmission channel, but does indicate that alternatives to that transmission channel can be used. However, this is not an on-the-fly channel selection of a transmission channel for different groups of products. In fact, Bishop '201 indicates that a pager

15   system is used to transmit commands to the vehicles (Col 4; Lns 6 – 14). There is no mention in Bishop '201 of selecting an alternative transmission channel based on a product target group as Applicant herein claims.

Accordingly, the entire rejection of Claim 18 and its depended claims can not

20   be sustained because the claim limitation of selecting a broadcast channel based on a preprogrammed correlation is simply not disclosed in Bishop '201. If anything, Bishop teaches away from the use of multiple channels by stating that the preferred system is a single system that covers a wide geographical area (Col 4; Lns 6 – 10). The only possible reason that the wide geographical

25   area described by Bishop needs to be covered by a single system is that all product groups are listening to the same transmission channel. All of Claim 18's dependent claims also can not be rejected under 35 USC 103 because all dependent claims that stem from a non-obvious claim carrier the limitations of their base claim and are thus also non-obvious.

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5. With respect to Claim 23 and its dependent claims, the office action states that the Bishop reference teaches a means to store the fact that the transmission was received. The Examiner then goes on to state that this would make it obvious that the time of transmission would be recorded to

10 support dispute resolution. First, there is no suggestion that such a mechanism is provided by the customer data base and message/command processing center described by Bishop '201 (Col 3; Lns 55 – 67). Again, there is no such teaching or suggestion of such capability. Because this limitation is not suggested or taught by Bishop, it must be withdrawn.

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The Examiner is now contradicting himself compared to his arguments in a co-pending application (Serial No. 10/615,412) in which he repeatedly argues that the time of reception is to be used for the resolution of a dispute. The Applicant asks which position does the Examiner wish to take? Does the time

20 get stored in the receiver or in the transmitter? Again, the Examiner is using impermissible hindsight and is reinventing the Applicants invention.

The Examiner states that in the event of a dispute time of transmission would be recorded by one party so that the other party could not say that the

25 transmission was not timely sent. The parties, according to the reading of Bishop, are properly the user/owner of a vehicle and the manufacturer of the vehicle. All that Bishop teaches is that an indication is stored in the receiver that the recall notice was received. The important point here is that the Examiner does not understand the reason for recording the time of

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transmission.   The Examiner is simply wrong in stating that the time of transmission is to demonstrate that the signal was timely sent – this has no bearing on dispute resolution contemplated by Bishop.   The fact that the signal was sent timely does not mean that it was received.   The Examiner

5   does not appreciate the subtleties of product liability law.   What is important in dispute resolution is that there be an actual notification to a user. That is the core of the dispute. If there was a notification, then the user has assumed the risk of using the product and there is no liability. If the user was not notified, then there is no assumption of the risk.   Accordingly, the only thing that

10   matters is that the signal is received by the user not when it was sent.

The true purpose of storing the time that the signal is transmitted is to demonstrate in other *tangential* law suits (for example when a car manufacturer sues a recall notice provider) that a best effort was made in

15   transmitting the signal.   This Applicant is certain that the Examiner will now argue that Bishop contemplates such law suits, after all, "Bishop needs to be interpreted." The fact is that Bishop only contemplates law suits that involve the delivery of the indication to the user of a vehicle (owner/operator see Col 16, Ln38), so there is simply not rationale to include such tangential suits in

20   Bishops teachings.

The Examiner takes Official Notice that it is well known in the art for computers to record the date and time that information is received. How does this correspond to the storing of date and time for the transmission of a recall

25   signal. Applicant hereby demands an affidavit to be personally executed by the Examiner that it is common practice to record the date and time of the transmission of a recall notice signal because that is the claim limitation that the Examiner ought to be rejecting, *not the time that information is stored in a computer.*

6. The Examiner also alleges that Bishop teaches the use of a recall notice identifier. First, Bishop does not teach any such concept. Bishop is a system for triggering relays and enabling the presentation of pre-stored messages to the user of a product. One of the pre-stored messages is that the vehicle is the subject of a recall campaign (Col 16, Lns 16 – 20). Bishop does not teach or suggest that there could be different reasons for a recall. If this were the case Bishop would have said so. The Examiner has admitted during a previous interview that the Bishop reference is ambiguous and needs interpretation. This interpretation and impermissible hindsight are the only suggestive forces that the Examiner is relying upon in making such statements. Had the Applicant not taught the public that there could be multiple reasons for a recall and that a recall notice identifier could be used to distinguish the reason for a recall, the Examiner would never have come to such conclusion upon reading the term "recall information" in the cited Bishop reference.

7. Despite the last interview with the Examiner, the Examiner continues to argue, with almost reckless abandon, that the Bishop '201 reference teaches the conveyance of "recall information" and argued that Bishop '201 actually receives textual descriptions and other forms of "information". According to the Examiner, the term "information" encompasses every form of communications. Because of this, the Examiner argued, during this interview, that Bishop '201 was capable of conveying a recall notice indicator despite Applicant's discussion relating to the true nature of the Bishop method.

Applicant avers that Bishop '201 is only capable of conveying information by activating relays or selecting a pre-programmed message. The Examiner's suggestion that the delivery of "information" cannot be accomplished by

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operating a relay defies common practice. Everything that the '201 system communicates to an automobile operator is based on information that is stored in the vehicle and communicated to an operator by the operation of a relay or the like. In the case of the dashboard display, when a relay in slave unit 2 is activated "information" that has been stored therein is communicated to the operator via the dashboard display. The display might say "trunk open", or "15,000 mile check-up due", or any other information that has been programmed into the slave unit 2. Not only is there no basis for saying that "information" cannot be conveyed to the operator by means of a relay operation, the '201 patent states that that is exactly how it is done. (Col. 12, lines 13-34).

What is important here is that the Examiner continues to defy the rule established in a plethora of Federal Circuit cases and Appeal Board decisions, that being that the reference teachings must be taken as a whole and when taken as a whole they must be read without the use of impermissible hindsight. By trying to expand the term "information", as the Examiner has memorialized in his response to Applicant's prior arguments, he is using impermissible hindsight and expounding on the ambiguous term "information" in order to advance his own position. This is not allowed.

To further strengthen the Applicants rebuttal, careful reading of the *entire Bishop '201 reference* supports Applicant's position that the only means of conveying information that is conveyed to the vehicle is a command to engage relays or to select messages from an on-board messaging unit. These are the only means of conveying information to the vehicles user. If the Examiner wants to suggest that the Bishop reference transmits other types of information, then the Examiner is altering the principle mode of operation of the Bishop reference and, as such, the Bishop reference must be

disallowed. Bishop relies on the transmission of numeric codes that comprise a vehicle identifier and an instruction to enable or disable a function (Col. 12, lines 13-34). Bishop is simply not capable of sending textual information as the Examiner would have us believe.

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8. With respect to Claim 27 and its dependent claims, the office action states that Claim 20 is rejected under 35 USC 103 as being unpatentable over Bishhop in view of Parrillo. Applicant notes that Parrillo is non analogous art and has raided this rebuttal before. But even if Parrillo were to be analogous

10   art, it fails to disclose the correlation to a multiplicity of time slots for the purpose of sending a recall notice to a product wherein a time slot is selected by a product identifier. Parrillo is not concerned with notifying a driver of a recall but is a means of downloading software patches into a vehicle's computer. Applicant has argued this before, but this Examiner seems not to

15   have any recollection of what is discussed in prior office actions or interviews. Because Parrillo is non-analogous art and because it fails to teach the claim limitation found in *Claim 27*, that being using time slots for bandwidth allocation according to target product groups, the rejection of Claim 27 and its dependent claims must be withdrawn.

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9. The Applicant is extremely disappointed in the quality of the office action in that it is scattered and filled with flawed reasoning. The Applicant is paying fees to the patent office for the purpose of advancing legitimate claims and prays that future office actions will be more structured and raise proper

25   rejections. For example, in the claims currently pending, there are three independent claims, each having different limitations that clearly distinguish those claims from the prior art and each other. In spite of the fact that the claims are well structured, the rejections overlap and do not properly cite references to support rejection of any particular claim.

10. For the foregoing reasons, and those discussed in our recent interview, it is urged that this application is in condition for allowance. If the Examiner has any questions, it is requested that he contact Jack J'maev at 909-437-8390.

5 Applicant thanks the Examiner again for his careful attention to this application.

Respectfully submitted,

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